She already has demonstrated her affinity for hard work and tenacity. Shawntel competed in three Miss Oklahoma pageants before she won the title in July of this year.

After the pageant, Shawntel's father, Gailen Smith, commented that when Shawntel speaks to people, her inner beauty shines through. What a wonderful and appropriate sentiment. I congratulate Gailen, and Shawntel's mother, Karen, whose daughter possesses not only physical beauty, but inner beauty and strength of character as well.

Mr. President, Shawntel's example rekindles our belief in each individual's ability to accomplish something extraordinary and restores our confidence in the American spirit of helping others realize their dreams. Our State of Oklahoma, which is home to the finest people anywhere, celebrates her achievement.

Congratulations, Shawntel. We are pleased for you and look forward with great pride to the year ahead as you represent our State and our Nation.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, the impression will not go away: The $4.9 trillion Federal debt stands today as a sort of grotesque parallel to television's energizer bunny that appears and appears and appears in precisely the same way that the Federal debt keeps going up and up and up.

Politicians like to talk a good game—and talk is the operative word—about reducing the Federal deficit and bringing the Federal debt under control. But watch how they vote. Control, Mr. President. As of Wednesday, September 27, at the close of business, the total Federal debt stood at exactly $4,955,602,761,788.67 or $18,811.55 per man, woman, child on a per capita basis. Res ipsa loquitur.

Some control, is it not?

ADVANCE NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to Section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a advance notice of proposed rulemaking was submitted by the Office of Compliance, United States Congress. The advance notice seeks comment on a number of regulatory issues arising under the Congressional Accountability Act.

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the notice was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE

(The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Family and Medical Leave Act of 1993, Fair Labor Standards Act of 1938, Employee Polygraph Protection Act of 1988, Worker Adjustment and Retraining Notification Act and Uniformed Services Employment and Reemployment Rights Act)

ADVANCE NOTICE OF PROPOSED RULEMAKING

Summary

The Board of Directors of the Office of Compliance (''Board'') invites comments from employing offices [use appropriate definition for separate House and Senate publication], covered employees and other interested persons on matters arising in the issuance of regulations under sections 202(d)(2), 203(c)(2), 204(c)(2), 205(c)(2) and 206(c)(2) of the Congressional Accountability Act of 1995 (PL 104–1) (''CAA'' or ''Act'').

The Act authorizes the Board to issue regulations to implement sections 202, 203, 204, 205 and 206 of the Act. The Board issues this Advance Notice of Proposed Rulemaking to solicit comments from interested individuals and groups in order to encourage and obtain participation and information as early as possible in the development of regulations. In this regard, the Board invites and encourages commentors to identify areas or specific issues they believe should be addressed in regulations and to submit supporting background information and rationale as to what the regulatory guidance should be. In addition to receiving written comments, the Office will consult with interested parties in order to further its understanding of the need for and content of appropriate regulatory guidance.

The Board is today, in a separate notice, also publishing proposed rules under section 204(a)(3) of the Congressional Accountability Act relating to the Capitol Police's use of lie detector tests under the Employee Polygraph Protection Act of 1988.

In addition to the foregoing, by this Notice, the Board seeks comments as to certain specific matters before promulgating proposed rules under section 202 through 206 of the Act.

Dates.—Interested parties may submit comments within 30 days after the date of publication of this Advance Notice in the Congressional Record.

Addresses.—Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, DC 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''Fax'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, DC., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For further information contact.—Executive Director, Office of Compliance at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, 202–244–2705.

Background

The Congressional Accountability Act of 1995 applies the rights and protections of eleven federal labor and employment law statutes to covered Congressional employees and employing offices. The Board of Directors of the Office of Compliance established under the CAA invites comments before promulgating proposed rules under sections 202, 203, 204, 205 and 206 of that Act. The above-referenced sections of the CAA respectively apply the rights and protections of the Family and Medical Leave Act of 1993, 29 U.S.C. 2611 et seq. (''FMLA''); the Fair Labor Standards Act of 1938, 29 U.S.C. 201 et seq. (''FLSA''); the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 et seq. (''EPPA''); the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq. (''WARN''); and the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Chpt. 43. Each of those sections authorizes the Board to issue regulations to implement the section and further states that such regulations ''shall be the same as the substantive regulations promulgated by the Secretary of Labor to implement * * * [the applicable statute] * * * except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Section 304 of the CAA prescribes the procedure applicable to the issuance of regulations by the Board for the implementation of this Act. It furthers requires the Board to recommend in the general notice of proposed rulemaking and in the regulations whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution.

Section 411 of the CAA provides with respect to the aforementioned sections that, ''if the Board has not issued a regulation on a matter for which this Act requires a regulation to be issued, the hearing officer, Board or court, as the case may be, shall apply to the extent necessary and appropriate, the most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue in the proceeding.''

The CAA requires that the Office of Compliance be open for business on January 23, 1996. The statutes made applicable under the aforementioned sections of the CAA become effective for covered employees and employing offices on that date.

These inter-related provisions of the CAA give the Board various rulemaking options under section 202 through 206 of the CAA. So that it may make a more fully informed decision regarding the issuance of regulations (for each or all of the relevant sections of the CAA), in addition to inviting and encouraging comments on all relevant matters, the Board requests comments on the following:

1. General Issues Under the CAA

a. Whether and to What Extent the Board Should Modify the Regulations Promulgated by the Secretary of Labor

The CAA directs the Board to issue regulations that ''shall be the same as substantive regulations promulgated by the Secretary of labor (''Secretary'') to implement * * * [the applicable statutes] * * * except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section'' (emphasis added). This provision provides important guidance concerning how employing offices, covered employees and other interested persons should structure their comments in response to this ANPR and related processes in order to be of maximum assistance to the Board. Accordingly,

the Board requests commentors who propose modifications to the substantive regulations promulgated by the Secretary to identify the ''good cause'' justification of such proposed modification by stating how much modification would be ''more effective'' for the implementation of the rights and protections applied under the CAA. In addition, the Board requests commentors to suggest technical changes in nomenclature or other matters that may be deemed appropriate in any regulation that might be issued.

Section 304(a)(2) of the Act also requires the Board to issue three separate bodies of regulations which shall apply, respectively, to the Senate and its employees, the House and its employees and all other covered employees and employing offices. Certain employment practices and categories of employees may be unique to one or more of these bodies.

The Board invites comment regarding under what circumstances, if any, such differences would warrant a substantive difference in the applicable regulations.

The Board further invites comment on whether and to what extent it should modify the regulations promulgated by the Secretary of Labor.

b. Notice Posting and Recordkeeping Requirements

The CAA does not expressly make reference to the notice posting and recordkeeping requirements of the various statutes applied to covered employees and employing offices. For example, the notice posting and recordkeeping requirements of section 106(b) and 109 of the FMLA and the Secretary's regulations thereunder (29 U.S.C. sections 2616(b) and 2619; 29 C.F.R. sections 825.300 and 825.500) are not expressly referenced in section 202 of the CAA, which applies the rights and protections of the FMLA to covered employees and employing offices. Similarly, the FLSA recordkeeping requirements, 29 U.S.C. section 211(c), and the Secretary's implementing regulations at 29 C.F.R. sections 516.0–516.34, are not expressly referenced in section 203 of the CAA, which applies the right and protections of the FLSA to covered employees and employing offices.

It could be argued that notice posting and recordkeeping requirements are an integral part of the rights and protections of the applied statutes and thus are implicitly included within the requirements of the CAA or that ''good cause'' exists to modify the existing substantive regulations by including some provision for notice-posting and recordkeeping. Notice postings inform covered employees of their rights and protections under the statutes and remind employing offices of their responsibilities. Recordkeeping enables an enforcement authority to determine the extent to which an employing office has complied with applicable law and, even in the absence of such authority, recordkeeping is helpful to an employing office that may be faced with a complaint from one if its employees.

Alternatively, it could be argued that the lack of specific reference in the CAA to the notice posting and recordkeeping requirements of the applied laws evidences congressional intent not to impose notice posting and recordkeeping requirements on employing offices as part of the CAA. Moreover, there is a concern that strictly-imposed notice posting and recordkeeping requirements might impose a significant and unforeseen costs on employing offices in creating and maintaining records that it does not ordinarily maintain. In addition, there may be constitutional or other institutional prerogatives that notice posting and recordkeeping requirements could be said to intrude upon.

The Board invites comment on whether the notice posting and recordkeeping requirements of the various laws made applicable by the CAA are incorporated as statutory requirements of the CAA and, if so, whether and to what extent the Secretary's regulations implementing those requirements should be adopted.

The Board further invites comment on whether, assuming notice posting and recordkeeping requirements are not incorporated as statutory requirements of the CAA, the Board (a) can and should develop its own notice posting and/or recordkeeping requirements pursuant to its ''good cause'' authority or (b) should propose guidelines regarding the types and forms of records employing officials may wish to keep in order to record the wages and working hours of non-exempt employees. Commentors are encouraged to suggest formats and contents which would be made available to employing offices for their consideration.

2. Specific Issues Under Individual Sections

In addition to the preceding issues that arise under all five sections of the CAA, the Board also requests comments on the following matters arising under individual sections of the Act.

a. Issues Under Section 203 (Fair Labor Standards Act)

The Fair Labor Standards Act sets forth requirements for minimum wage and overtime pay (except for exempt employees), equal pay for equal work, and a prohibition on oppressive child labor. With respect to overtime pay, employers must pay all non-exempt employees overtime pay of one and one-half times their hourly rate for each hour worked in excess of 40 hours per workweek. The regulations of the Secretary set forth specific criteria as to whether employees performing particular job responsibilities are *bona fide* executive, administrative or professional personnel.

(i) Employees Employed in a Bona Fide Executive, Administrative or Professional Capacity.

Section 13(a) of the FLSA provides an exemption from its minimum wage and overtime provisions for any employee employed in a bona fide executive, administrative or professional capacity as those terms are defined in regulations of the Secretary. 29 CFR Part 541 contains those regulations.

In addition to the regulations, the Department of Labor has issued interprestations and opinions which have elaborated upon the statutory definitions. The Board recognizes that these regulations, interpretations, and opinions may create uncertainties regarding the scope or application of the exemptions, particularly as they may be applied to the Congress, and it is often difficult to know in advance of litigation whether a particular employee is exempt under these regulations. As a result, employing offices may incur substantial and unanticipated overtime costs absent a major change in employing offices' manner of operation.

The Board invites comments on whether and to what extent the Board should modify the regulations promulgated by the Secretary regarding exempt executive, administrative and professional employees. Commentors are reminded that any suggested modification of the Secretary's regulations should be supported with an explanation as to how such modification would meet the ''good cause'' standard of the CAA. See Section 1.a, supra.

(ii) Whether The Board Should Adopt the Interprestive Bulletins as Regulations.

Various provisions of the FLSA give the Secretary specific regulatory authority; e.g. section 13(a)(1) provides an exemption for executive, administrative and professional employess ''as such terms are defined and delimited from the time to time by regulations of the Secretary . . .'' Regulations pursuant to such specific authorities are codified in 29 CFR Parts 510 to 697.

With respect to many of the other provisions of the FLSA for which the Secretary does not have specific regulatory authority, ''Statements of General Policy or Interpretation Not Directly related to Regulations'' codified in 29 CFR Part 775 to 794 have been issued. Typically, these parts (generally called Interpretative Bulletins) contain language such as the following in section 778.1: ''This Part 778 constitutes the official interpretation of the Department of Labor with respect to the meaning and application of the maximum hours and overtime pay requirement contained in section 7 of the Act. It is the purpose of this bulletin to make available in one place the interpretation of these provisions which will guide the Secretary and the Administrator in the performance of their duties under the Act until they are otherwise directed by authoritive decisions of the courts. . .''

The Board invites comment on the following questions:

(1) Are the Department of Labor's Interpretive Bulletins ''substantive regulations'' with the meaning of section 203(c)(2)?

(2) If the Interpretive Bulletins are substantive regulations, whether and to what extent the Board should modify them?

(3) If the Interpretive Bulletins are not substantive regulations, whether and to what extent the Board should adopt them as the Board's regulations or as official interpretations?

(4) If the Interpretive Bulletins are not substantive regulations, may an employing office nevertheless defend its actions if it has relied upon such an Interpretive Bulletin in light of the provisions of the Portal-to-Portal Act, 29 U.S.C. §251 et seq.?

(iii) Joint Employer Status.

In the context of the FLSA, the term ''employer'' has not been construed as limited to a single employer; it may include two or more nominally separate employers of the same employee. Such ''joint employment'' could arise by analogy under the CAA where a covered employee performs work which simultaneously benefits two or more covered employing offices such as a member's personal office and a committee staff or works for two or more covered employing offices at different times during the workweek.

A determination of whether employment is to be considered joint employment or separate and distinct employment for FLSA purposes depends on all of the facts in a particular case. The Department of Labor's Interpretive Bulletin lists the following factors in determining joint employment status: whether there is an arrangement between the employers to share the employee's services; whether the employee's services are provided to both employers at the same time; whether one employer is acting directly or indirectly in the interest of the other employer in relation to the employee; and whether both employers are commonly controlled. 29 C.F.R. Ch. V, Pt. 791.

Where an individual works for nominally separate employers that are actually ''joint employers'', all of the employee's hours of work are considered as one employment. In that event, all joint employers are liable, both separately and jointly, for compliance with the applicable provisions of the FLSA, including overtime pay.

The Board invites comment on whether and to what extent this doctrine is applicable under the CAA.

The Board further invites comment on whether it should adopt regulations governing joint employment for covered employees and employing offices, and if so, what the content of those regulations should be.

b. Issues Under Section 202 (Family and Medical Leave Act)

The Family and Medical Leave Act generally requires employers to permit covered employees to take up to 12 weeks of unpaid, job protected leave during a 12-month period for the birth of a child and to care for the newborn; placement of a child for adoption or foster care; care of a spouse; child, or parent with a serious health condition; or an employee's own serious health condition. The FMLA and the Secretary's regulations thereunder contain provisions concerning the maintenance of health benefits during leave, job restoration after leave, notice and medical certifications of the need for FMLA leave, and the relationship of FMLA leave to other employment laws including the Americans With Disabilities Act, Workers Compensation, and Title VII of the Civil Rights Act of 1964.

(i) Previous Application of the FMLA to Certain Employees.

The Board notes that Title V of the FMLA made specified rights and protections under the FMLA available to certain employees of the House of Representatives and of the Senate. On August 5, 1993, the House Committee on House Administration of the 103th Congress adopted regulations and forms to implement the FMLA in the House of Representatives.

Title V and such House regulations provided different FMLA rights and protections to employees of the House of Representatives and of the Senate than are provided under the CAA. For example, under Title V, ''any employee in an employment position'' of the House of Representatives and any employee of the Senate who has been employed for at least twelve months on other than a temporary or intermittent basis was eligible for FMLA leave. Thus, Title V provided FMLA leave to House employees immediately upon employment and to Senate employees who had worked at least twelve months on other than a temporary or intermittent basis.

Conversely, Section 202(a)(2)(B) of the CAA defines an ''eligible employee'' for the purpose of FMLA leave as any employee who has been employed in any employing office for 12 months and for at least 1,250 hours of employment during the 12 months immediately preceding the commencement of leave. Consequently, the CAA establishes different leave eligibility requirements than Title V of the FMLA established. The Board further notes that Section 504(b) of the CAA repeals Title V of the FMLA effective January 23, 1996.

Section 2612 of the FMLA as applied to the House of Representatives and to the Senate under the CAA entitles ''eligible employees'' to take up to 12 weeks of FMLA leave in a 12-month period. Section 825.200(b) of the regulations promulgated by the Secretary provides that the employer may elect to use the calendar year, a fixed twelve month leave or fiscal year, or a 12-month period prior to or after the commencement of leave to calculate the 12-month period within which eligible employees are entitled to take up to 12 weeks leave. The Board notes that the August 5, 1993 regulations of the House Committee on House Administration designated for all employing offices of the House of Representatives the period from January 3 of one year through January 2 of the following year as the FMLA leave year within which eligible employees are entitled to take up to 12 weeks of leave. The Board further notes that, pursuant to sections 504(b) and 506 of the CAA, Title V of the FMLA upon which such regulation was based is repealed effective January 23, 1996.

The Board invites comment on the following questions:

(1) Whether and, if so, how, the twelve month and 1,250 hours of work FMLA leave eligibility requirements should be calculated for employees employed by more than one employing office? See infra (ii) on ''Employment by More Than One Office''.

(2) Whether there is ''good cause'' to believe that a regulation designating a uniform FMLA leave year within which ''eligible employees'' are entitled to take FMLA leave would be ''more effective'' for the implementation of the rights and protections of the CAA than the regulations promulgated by the Secretary which would permit employers to designate the 12-month period appropriate to their office?

(3) Whether, assuming that there is not ''good cause'' to designate a uniform FMLA leave year for all employing offices, the existence of non-uniform leave years by employing offices would affect the FMLA leave rights of ''eligible employees'' who are employed by more than one employing office? See infra (ii) on ''Employment by More Than One Office''.

The Board further seeks information on whether and to what extent policies and practices of the House of Representatives, the Senate, the Instrumentalities or any covered employing office exist that provide different FMLA rights and protections than would be provided under the CAA if the regulations promulgated by the Secretary were made applicable to such employees.

(ii) Employment by More Than One Office

In the context of the FMLA, the term ''covered employer'' has not been construed as limited to a single employer; it may include two or more employers of the same employee. Sections 825.106, 825.104(c)(2) and 825.107 of the regulations promulgated by the Secretary set forth factors to be considered in making a determination of whether a ''joint employment'', ''integrated employer'', or ''successor in interest'', respectively, relationship exists for the purposes of FMLA leave eligibility, job restoration and maintenance of health benefits responsibilities of employers.

The Board invites comment on whether and, if so, how the definitions of ''joint employer'', ''integrated employer'' or ''successor employer'' set forth in the regulations promulgated by the Secretary should be applied and/or modified to implement FMLA rights and protections under the CAA with respect to covered employees employed simultaneously or seriatim by more than one employing office during any relevant 12-month period.

Signed at Washington, D.C., on this 27th day of September, 1995.

GLEN D. NAGER,
Chair of the Board,
Office of Compliance.

NOTICE OF PROPOSED RULEMAKING

Mr. THURMOND. Mr. President, pursuant to section 304(b) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(b)), a notice of proposed rulemaking was submitted by the Office of Compliance, U.S. Congress. The notice relates to the Employee Polygraph Protection Act of 1988 and its applicability to the Capitol Police under the Congressional Accountability Act.

Section 304(b) requires this notice to be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

There being no objection, the notice was ordered to be printed in the RECORD, as follows:

OFFICE OF COMPLIANCE

(The Congressional Accountability Act of 1995: Extension of Rights and Protections Under the Employee Polygraph Protection Act of 1988)

NOTICE OF PROPOSED RULEMAKING

Summary

This document contains proposed regulations authorizing the Capitol Police to use lie detector tests under Section 204(a)(3) and (c) of the Congressional Accountability Act of 1995 (''CAA''), P.L. 104–1. The proposed regulations set forth the recommendations of the Executive Director, Office of Compliance as approved by the Board of Directors, Office of Compliance.

The CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees and employing offices within the legislative branch. Section 204 extends the rights and protections of the Employee Polygraph Protection Act of 1988 [29 U.S.C. §§2001, et seq.] to covered employees and employing offices. The provisions of section 204 are effective January 23, 1996, one year after the effective date of the CAA.

The purpose of this proposed regulation is to authorize the Capitol Police to use lie detector tests with respect to its own employees.

Dates.—Comments are due on or before 30 days after the date of publication of this notice in the Congressional Record.

Addresses.—Submit written comments (an original and 10 copies) to the Chair of the Board of Directors, Office of Compliance, Room LA 200, Library of Congress, Washington, D.C. 20540–1999. Those wishing to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile (''FAX'') machine to (202) 252–3115. This is not a toll-free call. Copies of comments submitted by the public will be available for review at the Law Library Reading Room, Room LM–201, Law Library of Congress, James Madison Memorial Building, Washington, D.C., Monday through Friday, between the hours of 9:30 a.m. and 4:00 p.m.

For Further Information Contact.—Executive Director, Office of Compliance at (202) 252–3100. This notice is also available in the following formats: large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to Mr. Russell Jackson, Director, Service Department, Office of the Sergeant at Arms and Doorkeeper of the Senate, (202) 244–2705.

Supplementary Information

Background and Summary

The Congressional Accountability Act of 1995 (''CAA'') was enacted into law on January 23, 1995. In general, the CAA applies the rights and protections of eleven federal labor and employment law statutes to covered employees offices within the legislative branch. Section 204(a) and (b) of the CAA applies the rights and protections of the Employee Polygraph Protection Act of 1988, 29 U.S.C. §2001, et seq. (''EPPA'') to covered employees and employing offices. Section 204(c) authorizes the Board of Directors of the Office of Compliance (''Board'') established under the CAA to issue regulations implementing the section. Section 204(c) further states that such regulations ''shall be the same as substantive regulations issued by the Secretary of Labor to implement the statutory provisions referred to in subsections (a) and (b)